

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MANUEL SARABIA GONZALEZ,
MARTIN PEREZ MORALES, RICARDO
PALILLERO, JOSE TORRES MIGUEL,
MAYNOR RIGOBERTO TOC PABLO,
AUCAY PESANTEZ SEGUNDO
VICTORIANO, DEIVIS DAVILA
MELENDEZ, and EDWIN GUARDADO
GARCIA, individually and on behalf
of others similarly situated,

REPORT AND
RECOMMENDATION

19 CV 3015 (LDH)(RML)

Plaintiffs,

-against-

ERVIN ROSENFELD, PANE E VINO
RESTAURANT, INC., MARIA TAVAREZ,
and 174 SMITH FOOD CORP.,

Defendants.

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LEVY, United States Magistrate Judge:

Plaintiffs Manuel Sarabia Gonzalez, Martin Perez Morales, Ricardo Palillero, Jose Torres Miguel, Maynor Rigoberto Toc Pablo, Aucay Pesantez Segundo Victoriano, Deivis Davila Melendez, and Edwin Guardado Garcia (“plaintiffs”) commenced this action on May 21, 2019 under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. and the New York Labor Law. (See Complaint, dated May 15, 2019, Dkt. No. 1.) On October 2, 2019, plaintiffs filed an amended complaint naming two additional defendants. (See Amended Complaint, dated Oct. 2, 2019, Dkt. No. 8.) On November 25, 2019, I issued an order noting that no proof of service had been filed as to any defendant with respect to the amended complaint. My order stated:

Plaintiffs are directed to either request additional time to effect service or to explain the status of service on the defendants by December 4, 2019. Failure to comply with this order may result in the imposition of sanctions, including a recommendation to Judge

DeArcy Hall that this case be dismissed for failure to prosecute.

(See Order, dated Nov. 25, 2019.)

On December 3, 2019, plaintiffs moved for a 120-day extension of time to effect service, which I granted *nunc pro tunc*.¹ (See Motion for Extension of Time to File, dated Dec. 3, 2019 (“Pls.’ Mot.”), Dkt. No. 9.) To date, plaintiffs have not filed proof of service as to any defendant with respect to the amended complaint or taken any other action to advance this case. Accordingly, I am constrained to recommend that this case be dismissed for lack of prosecution.

This Report and Recommendation is stayed until June 24, 2020 in order to afford plaintiffs a final chance to file proof of service. Any objection to this Report and Recommendation must be filed electronically within fourteen (14) days of that date. Failure to file objections in a timely manner may waive a right to appeal the District Court’s order. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 6(d), 72.

Respectfully submitted,

/s/
ROBERT M. LEVY
United States Magistrate Judge

Dated: Brooklyn, New York
June 16, 2020

¹ Plaintiffs’ request for an extension of time pertained specifically to individual defendants Ervin Rosenfeld and Maria Tavarez, as plaintiffs claimed to have already served corporate defendants Pane e Vino Restaurant, Inc. and 174 Smith Food Corp. (See Pls.’ Mot.) However, no proof of service has been filed as to either corporate defendant with respect to the amended complaint. (See id.)